

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

**SARAH CARBONI, a Minor, by and
through her parents and next friends,
BRANDI CARBONI and STEPHEN
CARBONI,**

Plaintiff,

vs.

**MARY LANNING MEMORIAL
HOSPITAL ASSOCIATION,
REBECCA WORDEN, M.D., and
MOSCATI HEALTH CENTER, P.C.,**

Defendants.

8:07CV308

ORDER

This matter is before the court on the Stipulation of Consent to File Amended Complaint [66] and the Stipulation to Alter Dates [69], filed by plaintiff and defendant, Mary Lanning Hospital.

In reviewing the file, the court notes that the plaintiff has challenged the constitutionality of the Nebraska Hospital Medical Liability Act, Neb. Rev. Stat. § 44-2801, et seq. The plaintiff must provide notice of this claim to the Attorney General of the State of Nebraska as required by Fed. R. Civ. P. 5.1(a).¹ Under Rule 5.1(c), the Attorney General may intervene within 60 days after the notice of constitutional question is filed or after the court certifies the challenge, whichever is earlier.

IT IS ORDERED:

1. The Stipulation of Consent to File Amended Complaint [66] is granted, and the Amended Complaint [67] is deemed filed instanter.

¹Fed. R. Civ. P. 5.1, governing constitutional challenges to statutes, provides:

(a) **Notice by a Party.** A party that files a pleading, written motion, or other paper drawing into question the constitutionality of a ... state statute must promptly:

(1) file a notice of constitutional question stating the question and identifying the paper that raises it, if:

* * * *

(B) a state statute is questioned and neither the state nor any of its agencies, officers, or employees is a party in an official capacity; and

(2) serve the notice and paper on ... the state attorney general if a state statute is challenged [] either by certified or registered mail or by sending it to an electronic address designated by the attorney general for this purpose.

2. Plaintiff shall comply with the notice requirements of Fed. R. Civ. P. 5.1(a) and file a certificate of service demonstrating compliance with Rule 5.1(a) and this order no later than **January 22, 2008**.

3. The Stipulation to Alter Dates [69] is held in abeyance for discussion during the planning conference now set for January 3, 2008 at 9:00 a.m.

DATED January 2, 2008.

BY THE COURT:

**s/ F.A. Gossett
United States Magistrate Judge**